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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

INSINKERATOR LLC, a Delaware
limited liability company,

Plaintiff,

v.

JONECA COMPANY, LLC, a Delaware
limited liability company, and THE
JONECA CORPORATION, a California
corporation,

Defendants.

Case No.: 8:24-cv-02600-JVS-ADS

**PLAINTIFF INSINKERATOR
LLC'S RESPONSE TO
DEFENDANTS JONECA
COMPANY LLC AND THE
JONECA CORPORATION'S
OBJECTIONS TO THE REBUTTAL
DECLARATION OF
CHRISTOPHER ZAMECNIK**

Date: January 6, 2025

Time: 1:30 p.m.

Place: 10C

Assigned to Hon. James V. Selna

Plaintiff InSinkErator LLC (“InSinkErator”) responds to portions Defendants Joneca Company, LLC and The Joneca Corporation’s (“Joneca”) Objections to Paragraphs 6 through 13 of the Rebuttal Declaration of Christopher Zamecnik (“Zamecnik Reb. Decl.”) (ECF 47–3), which Joneca filed in opposition to InSinkErator’s Motion for Preliminary Injunction (ECF 53), as set forth below.

I. PRELIMINARY STATEMENT

Joneca’s objections to Mr. Zamecnik’s statements in Paragraphs 6 through 13 of his rebuttal declaration are meritless. Mr. Zamecnik has established that his testimony is fact or proper lay opinion. (*See* ECF 27, Declaration of Christopher Zamecnik (“Zamecnik Orig. Decl.”).) Mr. Zamecnik’s testimony regarding his own personal experience applying UL 430 is fact. Mr. Zamecnik’s testimony is admissible lay opinion because it is rationally based on his particularized knowledge garnered from years of experience within his field of employment. This Court should therefore overrule Joneca’s objections and find that Mr. Zamecnik can properly testify to facts and opinions based on his personal knowledge.

II. ARGUMENT

A. Mr. Zamecnik’s Testimony Regarding Matters He Learned And The Experience He Gained As A Result of His Employment Is Fact or Admissible Lay Opinion.

Mr. Zamecnik’s testimony regarding his own personal experience applying UL 430 in testing hundreds of garbage disposal motors is fact, not opinion. (*See e.g.*, ECF 47-3 ¶ 7; “I do not use the Current Input Test to measure a motor’s horsepower, and to my knowledge InSinkErator has never used the test in that manner.”)

To the extent any of Mr. Zamecnik’s statements are considered opinion, they constitute admissible lay opinion because it is rationally based on his

1 particularized knowledge garnered from years of experience within his field of
2 employment.

3 “Opinion testimony by lay witnesses is admissible if it is ‘(a) rationally
4 based on the perception of the witness and (b) helpful to a clear understanding
5 of his testimony or the determination of a fact in issue.’” *See United States v.*
6 *Goodheim*, 686 F.2d 776, 779 (9th Cir. 1982) (quoting Fed. R. Evid. 701). “Rule
7 701 is meant to admit testimony based on the lay expertise a witness personally
8 acquires through experience, often on the job.” *City of Torrance v. Hi-Shear*
9 *Corp.*, Case No.: 2:17-cv-07732-FWS-JPR2024 U.S. Dist. LEXIS 206626, *14
10 (C.D. Cal. May 22, 2024) (overruling evidentiary objections).

11 A lay witness may “testif[y] based upon their particularized knowledge
12 garnered from years of experience within the field.” *United States ex rel.*
13 *Technica, LLC v. Carolina Cas. Ins. Co.*, Case No.: 08-CV-01673-H (KSC),
14 2012 U.S. Dist. LEXIS 51766, *15 (C.D. Cal. Apr. 11, 2012) (finding lay
15 opinion based on the witness’s experience in the field, relevant, and helpful to
16 the Court); *see also William Hablinski Architecture v. Amir Constr., Inc.*, Case
17 No. CV-03-6365 CAS (RNBx), 2005 U.S. Dist. LEXIS 50559, *26 (C.D. Cal.
18 Feb. 7, 2005) (finding “a partner in WHA who was intimately involved in the
19 design of the Sands Residence,” “may testify as a lay witness under Rule 701”
20 on “practices at WHA and in the industry”).

21 Therefore, “[c]ourts routinely permit witnesses to offer lay opinion
22 testimony concerning matters they learn or experience they gain as a result of
23 their employment.” *Vasserman v. Henry Mayo Newhall Mem’l Hosp.*, 65 F.
24 Supp. 3d 932, 946–47 (C.D. Cal. 2014) (collecting cases). “[J]ust because the
25 underlying facts and data are technical does not transform the information into
26 ‘expert testimony’ when those facts are within the personal knowledge and
27 experience of the company’s employee.” *Id.* at 947.

Moreover, “[p]ersonal knowledge may be inferred from declarations that concern areas within the declarant’s job responsibilities.” *Silva v. AvalonBay Cmtys., Inc.*, Case No. LA CV15-04157 JAK (PLAx), 2015 U.S. Dist. LEXIS 140673, *10 fn. 1 (C.D. Cal. Oct. 8, 2015) (overruling evidentiary objections); *see also In re Kaypro*, 218 F.3d 1070, 1075 (9th Cir. 2000) (“Personal knowledge may be inferred from a declarant’s position.”); *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999, 1018 (9th Cir. 1990) (holding that a CEO’s personal knowledge of various corporate activities could be presumed). “Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony.” Fed. R. Evid. 602.

Mr. Zamecnik “currently serve[s] as Product Engineering Technician II at InSinkErator.” (Zamecnik Orig. Decl. ¶ 1.) He has “been in a product engineering role for the past five years and have served in [his] current role for the past three years.” (*Id.*) “As a Product Engineering Technician II, [he has] spent approximately 99% of [his] time testing motors in InSinkErator’s testing lab.” (*Id.* ¶ 5.) He “personally conduct[s] motor testing for InSinkErator’s garbage disposal products.” (*Id.* ¶ 2.) He has “conducted well over 1,000 motor tests on hundreds of different garbage disposal motors in [his] time working at InSinkErator.” (*Id.* ¶ 5.) He “perform[s] [] tests [‘to measure horsepower’] and record[s] their results regularly as part of [his] job function.” (*Id.* at ¶ 5.) Most importantly, he has “personally run hundreds of tests using the specifications from UL 430, and [is] personally familiar with the requirements of that standard.” (Zamecnik Reb. Decl. ¶ 5.)

Moreover, Mr. Zamecnik’s statements about the purpose of the UL 430 safety standard, the requirements of that standard, and the proper execution of testing under that standard are properly founded on his intimate involvement with the testing of garbage disposals as part of his job. His statements concern the hundreds of UL 430 tests he has personally executed on garbage disposals

1 as a result of his employment. Thus, his testimony is proper lay opinion even if
2 the facts and data underlying his statements are technical.

3 **B. Mr. Zamecnik’s Testimony is Relevant.**

4 Evidence is relevant if it has “*any tendency* to make the existence of *any*
5 *fact* that is of consequence to the determination of the action more probable or
6 less probable than it would be without the evidence.” Fed. R. Evid. 401
7 (emphasis added). This standard is a “low threshold.” *Brown v. DirecTV, LLC*,
8 Case No. CV 13-1170-DMG, 2022 U.S. Dist. LEXIS 107244, *21 (C.D. Cal.
9 May 19, 2022) (finding testimony “cross[ed] the low threshold of relevance.”)
10 (quoting *Tennard v. Dretke*, 542 U.S. 274, 285 (2004)).

11 Mr. Zamecnik’s testimony easily crosses the threshold of relevance. His
12 statements that UL 430 is “a safety standard, not an advertising standard,” and
13 that he does “not use the Current Input Test to measure a motor’s horsepower,
14 and to my knowledge InSinkErator has never used the test in that manner” and
15 he was “personally surprised to learn that Joneca purports to use this test for
16 substantiation of consumer-facing horsepower claims” (Zamecnik Reb. Decl. ¶¶
17 6–7) are clearly relevant. As Joneca acknowledges, InSinkErator’s Motion for
18 Preliminary Injunction requires the Court to determine whether Joneca’s “use
19 [of] UL 430 as the basis” for its false horsepower claims constitutes false
20 advertising. (ECF 53 at 6:23–24.)

21 It is indisputable that testimony regarding the propriety of using UL 430
22 as an advertising standard, considering its purpose as a safety standard, is of
23 consequence to the determination of InSinkErator’s Motion for Preliminary
24 Injunction. Mr. Zamecnik is a garbage disposal testing technician who has
25 conducted hundreds of garbage disposal safety tests under UL 430, and
26 countless other tests to measure the horsepower of garbage disposals. That he
27 has *never* used UL 430 to measure horsepower, and he finds it surprising that
28 Joneca is using UL 430 safety tests to substantiate consumer-facing horsepower

claims, plainly has a tendency to show that Joneca's use of UL 430 as the basis to rate a garbage disposal's horsepower and then advertise that rating is false advertising. Therefore, Joneca's argument that Mr. Zamecnik's testimony is irrelevant is simply incorrect.

III. CONCLUSION

InSinkEerator respectfully urges this Court to overrule Joneca's objections to Mr. Zamecnik's Rebuttal Declaration.

Respectfully submitted,

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DATED: January 2, 2025

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L.R. 11-6.2. Certificate of Compliance

The undersigned, counsel of record for Plaintiff InSinkErator LLC, certifies that this brief contains 1,272 words, which complies with the word limit of L.R. 11-6.1.

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

DATED: January 2, 2025

By: /s/ David Halberstadter
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